No. 13012

# In the United States Court of Appeals for the Ninth Circuit

LEE ARENAS, APPELLANT

*v.*

UNITED STATES OF AMERICA AND ELEUTERIA BROWN ARENAS, ALSO KNOWN AS DELLA NICHOLSON, APPELLEES

*UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA*

## BRIEF FOR THE APPELLEES


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### OPINION BELOW

The district court's opinion (R. 20–52)[1] is reported at 95 Fed. Supp. 962.

### JURISDICTION

The jurisdiction of the district court was invoked under section 1 of the Act of February 6, 1901, 31 Stat. 760, 25 U. S. C. sec. 345, and 28 U. S. C. sec. 1353. The district court's judgment was entered March 12, 1951 (R. 86–91). Notice of Appeal was filed April 3, 1951 (R. 92). The jurisdiction of this court rests on 28 U. S. C. sec. 1291.

[1] All references are to pages of the typewritten "Transcript of Record."

## STATUTES INVOLVED

So far as is material, section 1 of the Act of February 6, 1901, 31 Stat. 760, 25 U. S. C. sec. 345, provides:

> All persons who are in whole or in part of Indian blood or descent who are entitled to an allotment of land under any law of Congress, or who claim to be so entitled to land under any allotment act or under any grant made by Congress, or who claim to have been unlawfully denied or excluded from any allotment or any parcel of land to which they claim to be lawfully entitled by virtue of any Act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district court of the United States; and said district courts are given jurisdiction to try and determine any action, suit, or proceeding arising within their respective jurisdictions involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty (and in said suit the parties thereto shall be the claimant as plaintiff and the United States as party defendant); and the judgment or decree of any such court in favor of any claimant to an allotment of land shall have the same effect, when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him * * *: *Provided,* That the right of appeal shall be allowed to either party as in other cases.

So far as is material, section 1 of the Act of June 25, 1910, 36 Stat. 855, 25 U. S. C. sec. 372, provides:

> When any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive.

## QUESTIONS PRESENTED

Appellant brought suit under the act of February 6, 1901, 31 Stat. 760, 25 U. S. C. sec. 345, to secure allotments selected by himself and his deceased wife. He alleged he was her sole heir. A final judgment was entered that he was her sole heir and as such entitled to a trust patent for her allotment. Thereafter, the Secretary of the Interior, pursuant to the act of June 25, 1910, 36 Stat. 855, 25 U. S. C. sec. 372, found that the wife had a daughter by adoption and that she was heir to one-half of the allotment. Appellant brought this suit to cancel the daughter's trust patent as a cloud upon his title. The following questions are presented by the appeal from a decree sustaining her right to the trust patent:

1. Whether the judgment declaring appellant to be sole heir concludes the daughter who was not a party to the suit.

2. Whether the judgment was void because the court was without jurisdiction over the subject matter,

i. e., the ascertainment of heirs of a deceased allottee who died during the trust period.

3. Whether the decision of the Secretary of the Interior that the daughter was an heir of the deceased allottee may be reviewed by the courts.

STATEMENT

Appellant Lee Arenas brought this action against the United States and Eleuteria Brown Arenas, also known as Della Nicholson (and hereafter called appellee). He asked for a judgment (1) canceling a patent whereby the United States conveyed in trust to appellee an undivided one-half interest in lands of the Palm Springs Reservation selected for allotment by his deceased wife Guadaloupe and (2) quieting his equitable title to the lands as sole heir of the dead woman. He alleged that his equitable title as sole heir had been established by the final judgment in an earlier suit brought by him against the United States in the same court (No. 1321 O'C Civil) and that the subsequent trust patent to appellee was repugnant to that judgment (R. 2–10).

Defendants filed an answer (R. 11–19) in which they asserted (R. 16–17) that the judgment in No. 1321 did not bind appellee because she was not a party to that suit and because jurisdiction exclusively and conclusively to determine those entitled to Guadaloupe's allotment was vested in the Secretary of the Interior. And they alleged that the Secretary—by decision of the Examiner of Inheritance assigned to the Palm Springs Reservation—had determined that appellant

and appellee were each entitled to an undivided one-half interest in Guadaloupe's allotment and in consequence had issued to appellee the trust patent of which appellant complained.

When the case came on for trial on February 1, 1951, there were no witnesses. Appellant put in evidence the judgment in No. 1321 and appellees introduced the record made before the Examiner of Inheritance.

On February 19, 1951, the trial court filed its opinion (R. 20–52) and on March 12, 1951, it filed findings of fact (R. 71–80) and conclusions of law (R. 80–84) and entered judgment (R. 86–91).

The facts determinative of this appeal are not controverted. As stated in the opinion (R. 25–29) and in the findings (R. 71–80) they may be summarized as follows:

Appellant is a member of the Agua Caliente Band of the Mission Indians of California and a resident of the Palm Springs Reservation. So was his wife, Guadaloupe, until her death March 26, 1937.

In December 1940, appellant sued the United States to establish *inter alia* that he was entitled to trust patents for (1) an allotment selected by him and (2) an allotment selected by his deceased wife, of whom, so he alleged, he was sole heir. This suit is No. 1321 O'C Civil. It was brought pursuant to section 1 of the act of February 6, 1901, 31 Stat. 760, 25 U. S. C. sec. 345. Appellee was not made, nor did she become, a party to the suit. In 1945, the district court entered judgment that, in addition to being entitled to a trust patent effective as of June 21, 1923, for the allotment

selected by him, appellant, *as the sole heir of Guadaloupe,* was entitled to a similar trust patent for the allotment selected by her. In 1946, this Court modified the judgment so as to make the patents effective as of May 29, 1927.[2]

On February 24, 1949, a trust patent to 47 acres in the reservation was issued to the heirs of Guadaloupe. The heirs were not named. The patent declared the United States would hold the land in trust for 25 years from May 29, 1937.

On July 25, 1949, under authority conferred on the Secretary of the Interior by section 1 of the act of June 25, 1910, 36 Stat. 855, 25 U. S. C. sec. 372, the Examiner of Inheritance assigned to the Palm Springs Reservation held that as daughter of Guada-

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[2] To refresh the memory of the Court the litigation in No. 1321 O'C Civil is summarized as follows:

At first, appellant's complaint was dismissed on the ground that the case was ruled by this Court's earlier decision in *St. Marie* v. *United States*, 108 F. 2d 876 (1940), certiorari denied because not applied for in time, 311 U. S. 652. This Court affirmed the judgment of dismissal. 137 F. 2d 199 (1943). The Supreme Court granted certiorari and reversed directing that the Government be required to answer the complaint. 322 U. S. 419 (1944).

After the Government answered, there was a trial and judgment for appellant. 60 F. Supp. 411 (1945). The Court affirmed with a modification the judgment insofar as it awarded appellant allotments on account of his selection and that of Guadaloupe, but reversed so much of the judgment as awarded him allotments on account of his dead father and brother. 158 F. 2d 730 (1946). The Supreme Court denied appellant's petition for certiorari seeking review of the latter part of this Court's judgment and accordingly denied the Government's petition asking that, if appellant's petition was granted, the Court also review the part of the judgment holding he was entitled to allotments for himself and Guadaloupe. 331 U. S. 842 (1947).

loupe, adopted "in accordance with the established Indian Tribal Custom," appellee was "entitled to an undivided one-half interest of the allotment covered by the trust patent to the heirs of Guadaloupe."[3] Appellant was held entitled to the other half interest. He was notified of the decision the same day and advised that it would become final unless a petition for rehearing was filed within 60 days. He did not apply for rehearing. Accordingly, on November 8, 1949, the United States issued a trust patent to appellee declaring her the owner of an undivided half interest in Guadaloupe's allotment.

Upon the basis of the foregoing facts, the trial court concluded as a matter of law (R. 80–84) that the judgment in No. 1321 insofar as it purported to determine that appellant was sole heir of Guadaloupe was void because exclusive jurisdiction to determine that matter was vested in the Secretary of the Interior and because appellee was not a party to the suit. The court further concluded that the decision of the Examiner of Inheritance determining that the heirs of Guadaloupe were appellant and appellee and that each was entitled to a trust patent for an undivided half interest in Guadaloupe's allotment was binding on the parties and *res adjudicata* of the issues presented by this suit.

[3] On May 19, 1949, notices had been mailed to appellant and appellee and posted in five public places announcing that a hearing would be held at the Indian Office at Palm Springs on the following June 8 at 1:00 p. m. to determine the heirs of the late Guadaloupe Arenas. There was a hearing at the time and place specified in the notice. Lee and Eleuteria appeared at the hearing and participated therein (Fdg. VIII, R. 77–78).

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Accordingly the court entered judgment (R. 86–91) enjoining appellant from interfering with appellee's possession, use, and enjoyment of her share of the allotment and from interfering with the Government's performance of the duties imposed upon it in connection with the trust patent.

## ARGUMENT

### I

### Appellee is not bound by the judgment in No. 1321

No one is concluded by the judgment entered in a suit to which he is not a party. Appellee was not a party in No. 1321. Therefore, she was not deprived of her rights as an heir of Guadaloupe by the judgment entered in that suit declaring that appellant was the sole heir.

To avoid the impact of the foregoing, appellant points out that the United States, which *was* in No. 1321, was also trustee of appellee and asserts that in "a large and we believe controlling sense, [whatever that may mean] she * * * by virtue of privity, is likewise bound through her trustee" (Br. 16). The assertion does not deserve consideration. In suing the United States as sole heir of Guadaloupe for a trust patent for her allotment, appellant did not allege that appellee claimed to be part heir of Guadaloupe. It is obvious therefore that he did not call on the United States to represent appellee and also that in fact she was not represented. Consequently, the assertion has no substance and its acceptance would be utterly unjust to appellee. Indeed, this Court has hitherto held

that in defending a suit brought under the Act of February 6, 1901, 31 Stat. 760, 25 U. S. C., sec. 345 (as was the situation in No. 1321), the United States does not represent Indian wards who are not named in the complaint and hence that these wards are not concluded by the judgment entered in the suit. *Ya-Koot-Sa* v. *United States,* 262 Fed. 398 (1920). It is clear therefore that as heir to Guadaloupe appellee was not represented in No. 1321 and so is not bound by the judgment therein.

## II

**The district court had no power to determine the heirs of Guadaloupe**

Section 1 of the Act of June 25, 1910, 36 Stat. 855, 25 U. S. C. sec. 372 provides: "When any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, * * * the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decision thereon shall be final and conclusive." Thus, the 1910 Act required the Secretary of the Interior to ascertain the legal heirs of an Indian allottee who dies during the trust period. Its enactment ended pending suits to ascertain heirs of dead allottees holding under trust patents, prevented institution of future suits for that purpose, and prohibited judicial examination or revision of the Secretary's decisions in such cases. *Hallowell* v. *Commons,* 239 U. S. 506,

508 (1916); *Lane* v. *Mickadiet,* 241 U. S. 201, 209, *et seq.* (1916); *United States* v. *Bowling,* 256 U. S. 484 (1921); *First Moon* v. *White Tail,* 270 U. S. 243, 244 (1926).

Appellant contends that nonetheless in No. 1321 the district court ascertained that he is the sole legal heir of Guadaloupe—an Indian allottee who died during the trust period—and that its judgment is conclusive. He relies (Br. 16–20) on the fact that the judgment has become final and invokes the rule that a final judgment cannot be collaterally attacked, even if the court has erroneously assumed or held that it had jurisdiction. See e. g., *Des Moines Nav. Co.* v. *Iowa Homestead Co.,* 123 U. S. 552, 557, *et seq.* (1887); *Dowell* v. *Applegate,* 152 U. S. 327, 340 (1894); *Stoll* v. *Gottlieb,* 305 U. S. 165, 171 (1938).

But that rule applies only where the court has the power to, indeed is required to, determine whether it has jurisdiction. Consequently its assumption or conclusion in favor of jurisdiction is merely erroneous and so does not make void its final judgment. Accordingly, it is well-settled that a Federal court has power to determine the existence of diversity of citizenship and of the requisite jurisdictional amount. Similarly, an equity court has power to determine the want of an adequate remedy at law. Final judgments following such determinations are unassailable.

However, a "court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted it by its creators." *Stoll* v. *Gottlieb,* 305 U. S. 165, 171 (1938).

Where the court has no power over the subject matter sought to be litigated, i. e., to decide the issues raised by the pleadings, it is not authorized to determine that it has and its judgment purporting to pass on the subject matter is a nullity. No one, we assume, would think that the decree of a Federal court purporting for example to grant a divorce became valid if it happened to become final. As the Supreme Court said in *Elliott* v. *Piersol,* 1 Pet. 328, 340–341 (1828):

> Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences are considered in law as trespassers.
>
> This distinction runs through all the cases on the subject; and it proves that the jurisdiction of any court exercising authority over a subject, may be inquired into in every court, when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings.

In *Elliott* v. *Piersol,* the court found that a State court was not empowered by statute to approve a certificate of its clerk and hence that its judgment was void. Similarly void were a Land Department

decision disposing of land which Congress had said should be kept (*Wilcox* v. *Jackson,* 13 Pet. 498, 511 (1839)), a State court judgment validating an inchoate Spanish title (*Hickey's Lessee* v. *Stewart,* 3 How. 750, 762 (1844)), a State court judgment in a case occurring beyond the limits of the territorial jurisdiction conferred on it by statute (*Thompson* v. *Whitman,* 18 Wall. 457, 467 (1873)), and a Federal court injunction restraining a municipality from removing one of its officers. *In Re Sawyer,* 124 U. S. 200, 220–222 (1888). In the case last cited, the Court speaking through Mr. Justice Gray said:

> We do not rest our conclusion in this case, in any degree, upon the ground, suggested in argument, that the bill does not show a matter in controversy of sufficient pecuniary value to support the jurisdiction of the Circuit Court; because an apparent defect of its jurisdiction in this respect, as in that of citizenship of parties, depending upon an inquiry into facts which might or might not support the jurisdiction, can be availed of only by appeal or writ of error, and does not render its judgment or decree a nullity. * * * *Des Moines Navigation Co.* v. *Iowa Homestead Co.,* 123 U. S. 552.
>
> Neither do we say that, in a case belonging to a class or subjects which is within the jurisdiction both of courts of equity and of courts of law, a mistake of a court of equity, in deciding that in the particular matter before it there could be no full, adequate and complete remedy at law, will render its decree absolutely void.

> But the ground of our conclusion is, that, whether the proceedings of the city council of Lincoln for the removal of the police judge, upon charges of misappropriating moneys belonging to the city, are to be regarded as in their nature criminal or civil, judicial or merely administrative, they relate to a subject which the Circuit Court of the United States, sitting in equity, has no jurisdiction or power over, and can neither try and determine for itself, nor restrain by injunction the tribunals and officers of the State and city from trying and determining.

Congress, by enactment of the act of June 25, 1910, 36 Stat. 855, 25 U. S. C., sec. 372, has withheld from the courts the power to ascertain the legal heirs of Indian allottees who die during the trust period. Consequently, the district court was not authorized to ascertain the legal heirs of Guadaloupe. In purporting to do so, it acted on subject matter over which it had no jurisdiction. In consequence, its judgment that appellant was sole legal heir of Guadaloupe is, as the court below held, a nullity.

Appellant contends (Br. 30–36) however that the 1910 act does not apply where it is necessary to sue under the act of February 6, 1901, 31 Stat. 760, 25 U. S. C., sec. 345 (p. 2, *supra*), to secure an allotment and the Indian dies before judgment is entered establishing his rights. He argues that in such a situation the court which has entertained the suit under the 1901 act may proceed to ascertain the legal heirs of the deceased allottee. Neither reason nor authority supports the contention.

On the contrary, when regard is had to the unqualified direction of the 1910 act that the Secretary of the Interior "shall" ascertain the heirs (see also *Hallowell* v. *Commons,* 239 U. S. 506, 508) and to the absence from the 1901 act of any provision even remotely suggesting that in cases brought under it the court should make the finding, it is evident that the contention depends for its validity upon arbitrarily limiting the plain meaning of the 1910 act, finding an exception—not expressed in the statute—to the Secretary's jurisdiction, and upon enlarging by implication the 1901 act. These distortions are quite unnecessary. The right of a deceased allottee to an allotment can be established by one suing in a representative capacity and hence the 1901 act can be given full effect without the court going on to an inquiry as to the allottee's heirs. On the other hand, since the court's judgment in favor of the allotment has the same effect "as if such allotment had been allowed and approved by him" as the 1901 act provides, the Secretary thereafter is in as good position to ascertain the heirs as if he had made the allotment of his own volition. Here, for instance, it is plain that the judgment in No. 1321 that Guadaloupe was entitled to an allotment could have been made without the further attempt to determine that appellant was her sole heir. It is equally plain that the judgment in No. 1321 did not as a practical matter preclude or even hinder the Secretary in exercising his functions under the 1910 act.[4]

[4] Appellant contends also (Br. 10–16) that in No. 1321 the court had power to determine the heirs of Guadaloupe pursuant to the principle (Br. 11) that "where a court, and especially a court of

In other words, contrary to appellant's contention (Br. 35) the two statutes may be "harmonized" by reading them as they are written.

Appellant's contention is equally unsupported by judicial authority. The first case cited by him, *Gerard* v. *United States,* 167 F. 2d 951 (C. A. 9, 1948) holds that the act of 1901 permits Indians to sue the United States to establish the invalidity of fee patents issued to them without their consent. The other, *First Moon* v. *White Tail,* 270 U. S. 243 (1926) (see p. 10, *supra*) holds that suit may not be maintained to set aside the Secretary's determination of the heirs of a deceased allottee under the act of 1910.

It is clear, therefore, that the jurisdiction to award allotments to Indians vested in the district courts by the 1901 act does not divest the Secretary of the Interior of the exclusive jurisdiction to ascertain the heirs of allottees who die during the trust period, conferred by the 1910 act.

## III

**The decision of the Secretary of the Interior that appellee is heir of Guadaloupe Arenas may not be reviewed by the courts**

Appellant correctly states (Br. 22) that the Examiner of Inheritance held that the heirs of Guada-

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equity, *has jurisdiction of the parties and subject matter of an action*, it has the right and power to decide every question which necessarily occurs in the cause." [Emphasis supplied.] But, as has been shown (pp. 9–13 *supra*) the court in No. 1321 lacked jurisdiction over appellee and over the subject matter of heirship and consequently the principle invoked does not apply. Furthermore, as appears just above, the question of heirship did not have to be decided in No. 1321.

loupe "determined in accordance with the laws of the State of California" were appellant and appellee, the latter being a "daughter (adopted by decedent in accordance with established Indian Tribal Custom)." (See Fdg. IX, R. 78–79; Deft's Ex. A).

Appellant contends (Br. 21–29) that the Examiner's decision is erroneous and that he is not concluded thereby. But, as the Statement points out (p. 7 supra), appellant did not avail himself of the opportunity to have the Examiner's decision reviewed, an thus failed to exhaust his administrative remedies. Consequently—even assuming that the correctness of the decision presented a question which the courts could decide—it cannot be raised by appellant. *Milheim* v. *Moffat Tunnel Dist.,* 262 U. S. 710, 723 (1923); *McGregor* v. *Hogan,* 263 U. S. 234, 238 (1923); *Goldsmith* v. *Bd. of Tax Appeals,* 270 U. S. 117, 123 (1926).

Even apart from the foregoing the contention may not be considered. The allotment is held in trust by the United States under the administration of the Secretary of the Interior. So long as this continues, the courts have no power to question that official's administration of the allotted property. His determination of the heirs is, by the act of June 25, 1910, made "final and conclusive." As the Supreme Court has said: "The words 'final and conclusive' describing the power given to the Secretary * * * must be treated as absolutely excluding the right to review in the courts * * * the question of fact as to who were the heirs of an allottee, thereby causing that question to become one within the final and conclusive

competency of the administrative authority." *Lane* v. *Mickadiet,* 241 U. S. 201, 209 (1916).

The cases cited by appellant (Br. 28) did not concern property under the control of the Secretary of the Interior. Thus, *Dixon* v. *Cox,* 268 Fed. 285, 289–290 (C. A. 8, 1920) upon which appellant leans (Br. 28–29) involved property which had ceased to be restricted. Legal title had vested in the defendant, whom the Secretary during the trust period had found to be the heir of a deceased allottee. Plaintiffs sought to avoid the Secretary's decision by imposing upon the property a trust in their favor. It was in this context that the court in the passage quoted by appellant stated that the Secretary's decision could be "avoided" by proof that it was induced by fraud or error of law or that it was unsupported by evidence.[5]

*Hanson* v. *Hoffman,* 113 F. 2d 780 (C. A. 10, 1940) also cited by appellant, was a suit to invalidate a will which had been approved by the Secretary of the Interior disposing of property still under restric-

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[5] Earlier in its opinion, the court said (268 Fed. at p. 288) that:

* * * the question of the validity and effect of that act [act of June 25, 1910] and of the jurisdiction of the Secretary of the Interior to hear, ascertain and decide who were the parties entitled by descent to the allotments of deceased Indians described therein, has been repeatedly considered and conclusively determined by the Supreme Court and by other Federal courts, and they have uniformly sustained the act, the power of the Congress to enact it, the jurisdiction of the Secretary to decide the questions of heirship, and the finality of his decisions.

tion and of other property freed of restriction. The court held that the property freed of restriction could be impressed with a trust in favor of one complaining of the Secretary's approval if in fact that action was induced by extrinsic fraud. However, so far as concerned property still under restriction, the court held that the Secretary's action could not be reviewed.

In any event, the decision of the Examiner of Inheritance was correct. Section 5 of the act of January 12, 1891, 26 Stat. 712, 713, provides that the trust patents covering the allotments shall declare that for 25 years the United States will hold the land in trust for the allottee or, in the case of his decease, "his heirs according to the laws of the State of California." Appellant contends (Br. 22–25) that the 1891 act required that appellee be adopted pursuant to the provisions of the California Civil Code in order to inherit from Guadaloupe and says—correctly enough— that the Code does not provide for the adoption of a minor child "in accordance with established Indian Tribal Custom."

The 1891 act does not contain this requirement. It requires only that the allotted lands shall pass according to the California succession or descent statutes. The California statutes in respect of adoption are not succession or descent statutes. Rather they prescribe the method whereby a status is created. *Estate of Grace,* 88 C. A. 2d 956, 959, 200 P. 2d 189 (1949).

Section 5 of the 1891 act here involved is the same

as an 1882 act concerning allotments to Omaha Indians in Nebraska. In *Hallowell* v. *Commons,* 210 Fed. 793 (C. A. 8, 1914), affirmed 239 U. S. 506 (1916), the court while declining to determine the heirs of a deceased allottee because of the act of June 25, 1910, discussed the status of the child of a polygamous marriage. While Nebraska law prohibited such a marriage and made its offspring illegitimate, it was permitted by tribal custom. The court said (p. 800):

> The right of [the child] to be considered an heir according to the laws of Nebraska is in no wise dependent upon her parents having been married according to the laws of Nebraska. This Indian tribe at the date of the marriage * * * was a semi-independent power, and, though dwelling within the State of Nebraska, it could make no laws affecting the customs among these Indians, and least of all could any laws on marriage of Nebraska have any effect among the members of such Indian tribe.

So also appellee's right to be considered an heir of Guadaloupe according to the laws of California is in no wise dependent upon her being adopted according to the laws of that State. It is enough that, as the Examiner of Inheritance determined, she was adopted "in accordance with established Indian Tribal Custom." By adoption in this manner, she attained a status which under the California statutes of descent and succession made her the heir of Guadaloupe.

Consequently, the Examiner's determination of heirship was in accord with California law.

## CONCLUSION

The judgment should be affirmed.
Respectfully submitted.

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